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IN THE
Supreme Court of the United States

THE CHASE MANHATTAN BANK, *et al.*,
Petitioners,
v.
GENE GAVIN,
Commissioner of Revenue Services
of the State of Connecticut,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Connecticut

BRIEF FOR *AMICI CURIAE* AMERICAN BANKERS ASSOCIATION, CALIFORNIA BANKERS ASSOCIATION, ILLINOIS BANKERS ASSOCIATION, MASSACHUSETTS BANKERS ASSOCIATION, MICHIGAN BANKERS ASSOCIATION, MISSOURI BANKERS ASSOCIATION, NEW YORK BANKERS ASSOCIATION, AND PENNSYLVANIA BANKERS ASSOCIATION IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI CURIAE* [1]

The American Bankers Association is the principal national trade association of the banking industry in the United States. Its membership includes community, re-

[1] No counsel for any party had any role in authoring this brief, and no person other than *amici curiae* made any monetary contribution to its preparation or submission. Written consents of the petitioners and respondent have been obtained and filed with the Clerk of the Court.

gional, and money-center banks and holding companies, as well as savings associations, trust companies, and savings banks. These institutions, located in each of the 50 States and the District of Columbia, account for approximately 90 percent of assets in the domestic banking and thrift industry. In 1997, banks, thrifts, and trust companies administered more than a billion trust and estate accounts containing nearly $1.1 trillion of assets.[2]

The California Bankers Association is a non-profit trade association incorporated under the laws of California. The California Bankers Association represents virtually all of the more than 300 commercial banks and trust companies in California.

The Illinois Bankers Association represents more than 700 commercial and savings banks in Illinois, which together account for more than 90 percent of the banking assets in the State. A significant number (more than 200) of Illinois's commercial and savings banks engage in trust and fiduciary activities, and the Illinois Bankers Association maintains a strong commitment to representing them in legislative, regulatory, and judicial proceedings regarding matters of interest to them, including state and federal taxation.

The Massachusetts Bankers Association is comprised of more than 200 commercial, savings, and cooperative banks and savings and loan associations throughout the Commonwealth of Massachusetts, including all state and national banks with trust powers located in Massachusetts.

The Michigan Bankers Association is comprised of regional, community, and money-center banks located in

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[2] *See* Federal Financial Institutions Examination Council, *Trust Assets of Financial Institutions*, at Table A-2 (1997).

Michigan, including all banks with trust powers in the State.

The Missouri Bankers Association represents community commercial banks and thrifts, regional banks, and money-center banks located in Missouri, some of which have trust powers.

The New York Bankers Association is the principal trade association of the banking industry in New York State. It has more than 140 resident and nonresident member banks, consisting of both national and state-chartered banks and trust companies and including community, regional, and money-center banks. The New York Bankers Association's members include every commercial banking institution in New York State that has fiduciary powers pursuant to New York banking law. *See* N.Y. Banking Law § 100 (McKinney 1990).

The Pennsylvania Bankers Association is the statewide trade association representing commercial and savings institutions as well as trust companies. A significant number of the Pennsylvania Bankers Association's members maintain fiduciary authority and offer trust services to clients.

* * * *

The decision of the Supreme Court of Connecticut in this case raises two issues of profound concern to *amici*. *First*, it exacerbates the uncertainty and confusion regarding the contacts a State must have with a trust before it may constitutionally tax undistributed income of the trust. *Amici*'s members have fiduciary responsibility for administering millions of trusts throughout the country, many of which have contacts with more than one State. Clarification of the scope of a State's power to tax trust income is of utmost importance to the proper fulfillment of *amici*'s members' fiduciary duties.

Uncertainty regarding the scope of a State's power to tax trust income presents *amici*'s members with a Hobson's choice. Their fiduciary obligations require them to pay only taxes that are *lawfully* imposed on the trusts that they administer. Consequently, *amici*'s members must either (1) pay a tax of questionable constitutionality and potentially face personal liability for such payment if the tax is later struck down, or (2) refuse to pay the tax (or even file a return) and potentially face personal liability for interest and penalties if the tax is later sustained. This Court's guidance is needed to extricate banks, trust companies, and individual trustees from the untenable position in which the disagreement among state courts places them.

Wholly apart from the conflict that the Connecticut decision has sharpened over their obligation to file state tax returns, *amici* are disturbed by a second aspect of the Connecticut court's decision: under its holding, a State may tax *100 percent* of a resident trust's investment income from intangibles, without apportionment or credits for taxes paid to other States. Because trusts often are considered to be "resident" in several States simultaneously for state tax purposes (*e.g.*, where the trustee resides, where the beneficiaries reside, where the trust assets are located), the Connecticut ruling exposes multistate trusts to a substantial risk of multiple taxation, by permitting each of the States that can legitimately claim to be the trust's residence to tax all of the trust's intangible investment income without apportionment or credits. As a consequence, the Connecticut court's holding "exerts an inexorable hydraulic pressure" (*American Trucking Ass'ns, Inc. v. Scheiner*, 483 U.S. 266, 286 (1987)) on those who create and administer trusts to escape multiple taxation by confining their activities to a single State—in direct contradiction of first principles of this Court's Commerce Clause jurisprudence.

I. THIS COURT'S GUIDANCE IS NECESSARY TO RESOLVE THE CONFLICT AMONG STATE COURTS REGARDING THE CIRCUMSTANCES UNDER WHICH TRUSTS ARE SUBJECT TO STATE INCOME TAXATION.

The Connecticut Supreme Court's decision implicates two common and recurring fact patterns in which conflicting state-court rulings place trustees like *amici*'s members on the horns of a dilemma. The first problematic fact pattern arises when States like Connecticut claim an entitlement to tax undistributed income of testamentary trusts on the strength of no more than the testator's residence at the time of death. *See generally* Pet. 16 n.15 ("Twelve states and the District of Columbia have income tax statutes that tax trusts in a manner similar to Connecticut's.") (citing statutes). According to the Connecticut decision, trustees must file a tax return in such States and pay tax upon the trust's undistributed income—even if the trustee, the trust assets, and the trust administration are located outside the State, and all income subject to taxation is derived from sources outside the State. *See* Pet. App. 30a-33a; *accord District of Columbia v. Chase Manhattan Bank*, 689 A.2d 539 (D.C. 1997); *First Nat'l Bank of Boston v. Harvey*, 16 A.2d 184 (Vt. 1940).

But a trustee that follows the teachings of the courts of Connecticut, the District of Columbia, and Vermont will be paying a tax that courts in Missouri, New Jersey, and New York have said may not constitutionally be imposed. For example, the Supreme Court of Missouri has held that Missouri may not constitutionally tax the undistributed income of a trust created by a Missouri resident decedent when the trustees, the beneficiaries, the trust property, and the trust administration were in Illinois. *See Swift v. Director of Revenue*, 727 S.W.2d 880 (Mo. 1987). In the Missouri court's view, "[a]n income tax is justified only when contemporary benefits and pro-

tections are provided the subject property or entity during the relevant taxing period." *Id.* at 882; *accord Pennoyer v. Taxation Div. Director*, 5 N.J. Tax 386 (1983); *Taylor v. State Tax Comm'n*, 445 N.Y.S.2d 648 (App. Div. 1981).

The second problematic fact pattern arises when an inter vivos trust is created by a resident of State A, one or more of the trust's beneficiaries reside in State A, but the trust is administered in State B, where the trustee and the trust's assets are located. This was the fact pattern in *Safe Deposit & Trust Co. v. Virginia*, 280 U.S. 83 (1929), where this Court held that Virginia could not constitutionally impose a tax on the intangible property of an inter vivos trust, even though it was created by a Virginia resident and had a Virginia beneficiary, when the trustee and trust property were located in Maryland. Some state courts have therefore concluded that, even if the trust was created by a resident settlor and there are resident beneficiaries, a State may not impose a tax on an inter vivos trust's undistributed income. *See Mercantile-Safe Deposit & Trust Co. v. Murphy*, 203 N.E.2d 490 (N.Y. 1964); *see also Blue v. Department of Treasury*, 462 N.W.2d 762 (Mich. Ct. App. 1990) (Michigan may not tax undistributed income of irrevocable inter vivos trust created by a Michigan resident, when the trust is administered in Florida where the beneficiary, the trustee, and the income-producing trust assets are located); *Potter v. Taxation Div. Director*, 5 N.J. Tax 399 (1983) (New Jersey may not tax undistributed income of irrevocable inter vivos trust created by New Jersey domiciliary where trustee, beneficiaries, and assets are all located outside New Jersey).

One might think, then, that, on the strength of *Safe Deposit* and its progeny, *amici*'s members could safely decline to file income-tax returns for inter vivos trusts in

States of the settlor's or beneficiaries' residence, so long as the trustee and the trust property are located in other States. But members that do so act at their peril. The Connecticut Supreme Court has now declared that it is "not persuaded that . . . [*Safe Deposit*] . . . is still good law," Pet. App. 36a, and that it "disagree[s] . . . with the reasoning of those cases . . . in which courts have found the domicile of a beneficiary of an inter vivos trust insufficient for due process purposes," *id.* at 36a n.25. Moreover, the California Supreme Court has held that the presence of a beneficiary in California justified taxation of the undistributed income of even a trust created by a *non*resident. *See McCulloch v. Franchise Tax Bd.*, 390 P.2d 412 (Cal.) (en banc), *appeal dismissed*, 379 U.S. 133 (1964).

In short, the law in this area is uncertain at best and chaotic at worst. *See, e.g.*, M. Read Moore & Amy L. Sullivan, *State Income Taxation of Trusts: New Case Creates Uncertainty*, 24 Estate Planning 200 (June 1997) (discussing *District of Columbia v. Chase Manhattan Bank*, *supra*). Uncertainty in the law is particularly troublesome in this field: *amici*'s members are compelled to speculate about their obligation to file tax returns, knowing that a wrong guess may expose them to liability either for remitting taxes the trust was not required to pay or for failing to pay taxes that were properly due.[3] This Court alone can resolve the conflict among state courts, clarify the circumstances under which a State may compel a trust to pay tax on undistributed income, and permit trustees faithfully to discharge their fiduciary obligations.

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[3] Because most States' statutes of limitations do not begin to run until a taxpayer files a return, trustees' exposure to unpaid taxes, interest, and penalties could, in theory, be staggering.

II. REGIMES LIKE CONNECTICUT'S—UNDER WHICH A STATE TAXES THE ENTIRETY OF A TRUST'S INCOME EVEN WHEN, AS IN THIS CASE, OTHER STATES HAVE A LEGITIMATE CLAIM TO TAXATION OF THE SAME INCOME—DIRECTLY CHALLENGE SETTLED COMMERCE CLAUSE PRINCIPLES.

Whether or not Connecticut may tax the undistributed trust income at issue in this case, no one would doubt that New York (where the trustees resided, where the trust property was located, and where the trusts were administered) may do so. *See, e.g., Greenough v. Tax Assessors of Newport*, 331 U.S. 486 (1947); *Guaranty Trust Co. v. Virginia*, 305 U.S. 19 (1938); *Safe Deposit & Trust Co. v. Virginia, supra.* Accordingly, if this Court leaves undisturbed the Connecticut Supreme Court's determination that the Due Process Clause is no obstacle to Connecticut's taxing the undistributed income of one or more of the trusts at issue here, a second question of abiding concern to *amici* is presented. The concern stems from Connecticut's failure to make any accommodation for the fact that other States have an equal or greater entitlement to tax the trusts' intangible investment income. As a consequence, Connecticut's taxing scheme creates a substantial risk of multiple taxation of trusts that have contacts with more than one State. It thereby undermines our national common market, in direct contradiction of fundamental Commerce Clause principles.

To appreciate the nature and magnitude of the problem created by Connecticut's regime for taxing income of trusts, one may usefully compare it with state income taxation of individuals. States have traditionally used two alternative predicates to tax income (whether of individuals or trusts): residence and source. *See, e.g.*, American Law Institute, *Federal Income Tax Project: International Aspects of United States Income Taxation* 6 (1987).

Neither predicate offends due process. With respect to residence-based taxation, this Court has declared: "That the receipt of income by a resident of the territory of a taxing sovereignty is a taxable event is universally recognized. Domicil itself affords a basis for such taxation." *New York ex rel. Cohn v. Graves*, 300 U.S. 308, 312-13 (1937). With respect to source-based taxation, the Court has stated:

> That the state, from whose laws property and business and industry derive the protection and security without which production and gainful occupation would be impossible, is debarred from exacting a share of those gains in the form of income taxes for the support of the government, is a proposition so wholly inconsistent with fundamental principles as to be refuted by its mere statement.

Shaffer v. Carter, 252 U.S. 37, 50-51 (1920). Accordingly, States generally tax residents (whether individuals or trusts) on all income wherever earned, *see* 2 Jerome R. Hellerstein & Walter Hellerstein, *State Taxation* ¶¶ 20.04[2], 20.09[1] (3d ed. 1998), while taxing nonresidents on income from sources within the State, *see id.* ¶¶ 20.05[2], 20.09[1].

In the case of income earned outside a taxpayer's State of residence, the confluence of the two alternative predicates for taxation may lead to *multiple* taxation—*i.e.*, the same income may be subjected to source-based taxation by one State and residence-based taxation by another State. Without more, multiple taxation would plainly inhibit interstate commerce, thereby raising grave Commerce Clause problems. *See infra*, pp. 13-15. But States have generally recognized and addressed this problem. When both the State of residence and the State of source have a legitimate claim to tax income, the State of residence (implicitly acknowledging its inferior entitlement to tax)

ordinarily yields to the State of source to avoid double taxation. It does so by providing credits against income taxes for taxes paid to the State of source. Indeed, every State with a broad-based personal income tax provides a credit for taxes that their resident individuals and trusts pay to other States. *See* 2 Hellerstein & Hellerstein, *supra*, ¶¶ 20.04[2], 20.09[1], 20.10.

But the credit statutes of many of these States (including Connecticut) limit the credit to taxes paid on "income derived from sources" in other States. Conn. Gen. Stat. Ann. § 12-704(a) (West 1999 Supp.).[4] And, for purposes of these statutes, investment income from intangibles is usually deemed not to have a "source" in other States; thus, States with credit statutes like Connecticut's will deny a resident a credit for taxes paid to other States

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[4] In addition to Connecticut, these States include Arizona (Ariz. Rev. Stat. Ann. § 43-1071.A.1 (West 1998 Supp.)); Arkansas (Ark. Code Ann. § 26-51-504(a)(1) (Michie 1997)); California (Cal. Rev. & Tax. Code § 18001(a)(1) (West 1994)); Colorado (Colo. Rev. Stat. Ann. § 39-22-108 (West 1990)); Delaware (Del. Code Ann. tit. 30, § 1111(a) (1997)); District of Columbia (D.C. Code Ann. § 47-1806.4(a) (1997)); Idaho (Idaho Code § 63-3029(1) (1998 Supp.)); Louisiana (La. Rev. Stat. Ann. § 47:33 (West 1999 Supp.)); Maine (Me. Rev. Stat. Ann. tit. 36, § 5217-A (West 1998 Supp.)); Missouri (Mo. Ann. Stat. § 143.081 (West 1996)); Montana (Mont. Code Ann. § 15-30-124 (1997)); Nebraska (Neb. Rev. Stat. Ann. § 77-2730(1) (Michie 1995)); New York (N.Y. Tax Law § 620(a) (McKinney 1987)); North Carolina (N.C. Gen. Stat. §§ 105-151, 105-160.3 (1997)); North Dakota (N.D. Cent. Code § 57-38-04.2.a (1999 Supp.)); Oklahoma (Okla. Stat. Ann. tit. 68, § 2357(B)(1) (West 1999 Supp.)); Oregon (Or. Rev. Stat. § 316.082 (1998 Supp.)); South Carolina (S.C. Code Ann. § 12-6-3400 (1998 Supp.)); Utah (Utah Code Ann. §§ 59-10-106(1) (1996), 59-10-201 (1999 Supp.)); Vermont (Vt. Stat. Ann. tit. 32, § 5825 (1998 Supp.)); and West Virginia (W. Va. Code § 11-21-20(a) (1995)). *See also* Va. Code Ann. § 58.1-332 (Michie 1997) (limiting resident credit to "earned or business income," which would disallow a credit for income from intangibles). Because Tennessee's income tax is limited to investment income, it does not provide for a credit for taxes paid to other States on such income.

on investment income derived from intangibles. *See* Pet. App. 39a-40a; *see also In re Mallinckrodt*, DTA No. 807553, [1991-92 Transfer Binder] N.Y. State Tax Rep. (CCH) ¶ 400-670 (N.Y. Tax Appeals Tribunal Nov. 12, 1992) (denying New York resident credit for Missouri taxes imposed on intangible investment income received from Missouri trust because not "derived" from Missouri source within meaning of New York's credit statute).

In the context of income taxation of individuals, this refusal to grant a credit may be tolerable. States tax nonresidents only on income from sources within the State, and States generally do not consider intangible investment income earned by a nonresident as being derived from sources within the State. *See* 2 Hellerstein & Hellerstein, *supra*, ¶ 20.05[6]. Consequently, a State's failure to grant its individual residents a credit for taxes paid on intangible investment income to other States usually imposes no hardship on such taxpayers, because other States have not taxed such income. It is only in those rare instances in which an individual is deemed to be a resident of more than one State simultaneously—*e.g.*, because she has a domicile in one State while maintaining a substantial presence in another [5]—that the individual would face even the possibility of double taxation of her intangible investment income. And, at any rate, intangible investment income comprises a relatively modest portion of the earnings of most individuals.

Where income taxation of *trusts* is concerned, however, more serious problems arise. Whereas individual taxpay-

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[5] For example, if a taxpayer has her principal residence in New Jersey but commutes to New York, where she maintains a permanent place of abode, the taxpayer would be a resident of New Jersey, based on her domicile, *see* N.J. Stat. Ann. § 54A:1-2m (West 1986), and a resident of New York, based on the maintenance of a permanent place of abode in the State coupled with her presence in New York for more than 183 days, *see* N.Y. Tax Law § 605(b)(1)(B) (McKinney 1987).

ers almost invariably are considered to be resident in only one State at any given time, trusts frequently are considered to be resident in several States simultaneously: they may be considered to be resident where the trustee resides,[6] where the beneficiaries reside,[7] where the trust's assets are located,[8] or where a combination of these factors applies.[9] These States' claim to the residence of the trust may be equal to or greater than Connecticut's claim based on the domicile of the settlor or the testator. *See, e.g., Greenough, supra.* Moreover, because each of these States, like Connecticut, will be taxing the trust's income on a "residence" basis, they will subject the trust's undistributed investment income to tax regardless of its source. And they will often provide no credit for other States' taxes on such income: the income (being investment income from intangibles) was not "derived from sources" within those States. *See supra*, p. 10 n.4.

The resulting problem is obvious. For example, Connecticut's claim of an entitlement to tax 100 percent of a resident trust's undistributed investment income gives rise to double or triple or even quadruple taxation if other States likewise assert an entitlement to tax such income without providing a credit for taxes paid to other States or some form of apportionment. If a Connecticut resident

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[6] *See, e.g.*, Ariz. Rev. Stat. Ann. §§ 43-1312, 43-1313 (West 1980); Ark. Code Ann. § 26-51-203 (Michie 1997); Cal. Rev. & Tax. Code § 17742 (West 1994).

[7] *See, e.g.*, Ga. Code Ann. § 48-7-22(a)(1)(C) (1995); N.C. Gen. Stat. § 105-160.2 (1997); Tenn. Code Ann. § 67-2-110 (1998).

[8] *See, e.g.*, Colo. Rev. Stat. Ann. § 39-22-103(10) (West 1998 Supp.); S.C. Code Ann. § 12-6-30(5) (1998 Supp.); Va. Code Ann. § 58.1-302 (Michie 1997).

[9] *See, e.g.*, Del. Code Ann. tit. 30, §§ 1136(a), 1140(a) (1997); Md. Code Ann., Tax-Gen. §§ 10-101(h)(1)(iii) (1997), 10-207(o) (1998 Supp.); Mass. Gen. Laws Ann. ch. 62, § 10(a) and (c) (West 1999 Supp.).

decedent established a testamentary trust with an Arizona resident trustee, who arranged for the trust to be administered in Virginia for the benefit of the trust's California resident beneficiaries, Connecticut, Arizona, Virginia, and California each would tax the trust on its undistributed investment income. *See supra*, p. 12 nn.6-9. Yet none of these States would provide a credit for the taxes paid on the same investment income to the other States. *See supra*, p. 10 n.4.[10]

These conflicting claims have a direct and pernicious impact on interstate commerce. Testators, settlors, and their advisers are induced to confine trust-related activities to a single jurisdiction in order to avoid the untoward tax consequences of crossing state lines. This balkanizing effect is illustrated by the advice offered by sophisticated trust-and-estate counsel, who urge that "the settlor must be advised of the tax consequences of selecting a person or trust company residing or situated out of state to serve as trustee of the proposed trust." Max Gutierrez, *Oops! The State Income Taxation of Multi-Jurisdictional Trusts*, 25th Annual Philip E. Heckerling Institute on Estate Planning ¶ 1204.1, at 12-19 (1991). Indeed, the court below agreed with petitioners' contention that, under the Connecticut statute, "testators will have an incentive to appoint only Connecticut trustees because appointing a trustee in another state 'necessarily subjects the testamen-

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[10] Connecticut does provide some relief: where it taxes a trust's undistributed investment income on the basis of a beneficiary's residence, it prorates the tax base by reference to the proportion of the beneficiaries that are state residents. *See* Conn. Gen. Stat. Ann. § 12-701(a)(4) (West 1999 Supp.). Some States that tax on the basis of the trustee's residence provide analogous relief by prorating the tax base by reference to the proportion of the trustees that are state residents. *See, e.g.*, Cal. Rev. & Tax Code § 17743 (West 1994). But such relief measures are limited in scope and inapplicable in the instant case.

tary trust to the risk of a second income tax in that State.'" Pet. App. 41a-42a.

Despite this risk of multiple taxation and its balkanizing effect, the Connecticut decision denies the existence of a Commerce Clause problem. *See id.* at 42a-44a. It thereby flies in the face of settled Commerce Clause doctrine: this Court has repeatedly and abundantly made clear that no State may tax 100 percent of a tax base to which other States may lay some legitimate claim. The logical underpinning for this rule is irrefutable: if a taxpayer is subject to tax in more than one State, permitting either State to tax the entire base without apportionment or a credit for taxes imposed by other States would expose the taxpayer to multiple taxation, which the Court has long condemned under the Commerce Clause. *See, e.g., Tyler Pipe Indus., Inc. v. Washington Dep't of Revenue*, 483 U.S. 232, 248 (1987) (invalidating tax that exposed taxpayer to "multiple burden"); *Gwin, White & Prince, Inc. v. Henneford*, 305 U.S. 434, 439 (1939) (invalidating tax because it imposed "the risk of a multiple burden to which local commerce is not exposed"); *J.D. Adams Mfg. Co. v. Storen*, 304 U.S. 307, 311 (1938) (invalidating tax that subjected interstate commerce "to the risk of a double tax burden to which intrastate commerce is not exposed, and which the commerce clause forbids").

Thus, in *Standard Oil Co. v. Peck*, 342 U.S. 382 (1952), the Court rejected Ohio's contention—analogous to Connecticut's here—that, as Standard Oil's domicile, it was entitled to tax 100 percent of Standard Oil's personal property, even though other States had authority to tax at least a portion of such property:

> The rule which permits taxation by two or more states on an apportionment basis precludes taxation of all the property by the state of the domicile. Otherwise there would be multiple taxation of inter-

> state operations and the tax would have no relation to the opportunities, benefits, or protection which the taxing state gives those operations.

Id. at 384-85 (internal citation omitted). The Court has reiterated this principle, rejecting claims that domiciliary States may tax 100 percent of a taxpayer's income or property when other States have a right to tax such income or property. *See Mobil Oil Corp. v. Commissioner of Taxes*, 445 U.S. 425, 444 (1980) ("[t]axation by apportionment and taxation by allocation to a single situs are theoretically incommensurate"); *Japan Line, Ltd. v. County of Los Angeles*, 441 U.S. 434, 447 (1979) ("The corollary of the apportionment principle, of course, is that no jurisdiction may tax the instrumentality in full.").

In short, the multiple tax burden to which Connecticut's taxing scheme exposes multistate trusts plainly offends the teachings of this Court's Commerce Clause cases: it "forecloses tax-neutral decisions," *Boston Stock Exchange v. State Tax Comm'n*, 429 U.S. 318, 331 (1977), and creates a competitive advantage for local over out-of-state trustees, *cf. South Central Bell Tel. Co. v. Alabama*, 119 S. Ct. 1180 (1999) (invalidating state tax favoring local over out-of-state corporations). This Court's review of the Connecticut decision is essential to reaffirm the fundamental Commerce Clause principle that, "if a taxpayer located in State A can demonstrate that it is taxable in State B, the taxpayer has a constitutional right to insist that State A attribute at least a portion of the taxpayer's overall tax base—whether it be property, income, or receipts—to State B." 1 Hellerstein & Hellerstein, *supra*, ¶ 8.02[1] at 8-10.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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